BAK BEE CHEE & ANOR.

v.

SGT. LEON COLIN ANESBURY

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[SUIT NO. 467 OF 1982]
26 FEBRUARY 1986

DAMAGES: *Motor vehicle accident - Second plaintiff suffered injuries, loss and damage- Defendant admitted liability - Assessment of quantum - Fracture of right tibia and fibula - Abrasions.*

On 15 April 1981 the 2nd plaintiff was riding pillion on a motor-cycle driven by the 1st plaintiff when it collided with a motorcar driven by the defendant. As a result of the collision the 2nd plaintiff suffered injuries, loss and damage. The defendant admitted liability and the only issue at trial was one of quantum of damages.

Held:

[1] The report of the orthopaedic surgeon practising in Sydney who had treated the 2nd plaintiff can be taken into account for the purpose of assessing general damages for pain and suffering and loss of amenities. The appropriate award for 1 cm shortening of the right leg would be RM12,000; for callus formation and depression of the scars including some 17 cms in length over the tibia and generally for loss of amenities of life a sum of RM15,000 was held to be fair and reasonable.

[2] Interest on the RM27,000 arrived at above shall be at 8% per annum from date of service of the writ to date of judgment.

[3] The parties agreed on special damages at RM800 and interest at 4% per annum on this sum is to run from the date of accident to date of judgment.

[Order accordingly.]

For the plaintiffs - K. Balasundaram; M/s. Shamsuriah & Balasundaram
For the defendant - Louis Edward Van Buerle; M/s. Cheong Wai Meng & Van Buerle

JUDGMENT

Mohamed Dzaiddin J:

On 15 April 1981 the 2nd plaintiff was riding pillion on motorcycle No. PP 7572 driven by the 1st plaintiff along Jalan Tanjong Tokong, Pulau Pinang when it collided with a motorcar PA 2560 driven by the defendant. As a result of the collision the 2nd plaintiff suffered injuries, loss and damage. The defendant admitted liability.

Quantum

The 2nd plaintiff is 26 years old at the time of the trial and married to an Australian. They have now settled down in Marrickville, New South Wales. She was admitted to the General Hospital Pulau Pinang for 3½ months with a fracture of right tibia and fibula and punctured wound over the anterior aspect of the right tibia and fibula. She also suffered abrasions over her face, right forearm and left knee. The fracture was not united and bone graft operation was done on 13 November 1981. Subsequent from her discharge from the General Hospital she was seen by the two specialists regarding her injuries. For the purpose of assessing

general damages for pain and suffering and loss of amenities I shall reply on the report of Mr. John Bannister, Orthopaedic Surgeon practising in Sydney, Australia. In his report dated 4 February 1986 he found that there was a large scar over the right iliac crest where a bone graft had been taken. There was a prominent scar over the front of the lower tibia. There was swelling of the calf in the mid tibial and lower tibial area. There was some depression of the scar. The scar over the tibia was some seventeen centimeters in length. There was also a very puckered scar across the back of the calf with indentation located about ten centimeters above the ankle.

On examination of her ankle movements her dorsiflexion movements were only to the neutral position and she was unable to dorsiflex fully. Her plantar flexion movements were normal. Her inversion- eversion movements were restricted to about two thirds of the normal range. Her knee movements were full. There was some prominence of the tibia where callus formation had occurred. She complained of numbness distal to the scar along the medial side of the scar. There was a leg length discrepancy of approximately one centimeter.

In his opinion, the 2nd plaintiff had persistent symptoms associated with her fractured tibia. These symptoms were likely to persist in the long term but degenerative changes of her ankle were not likely to follow. She had quite serious cosmetic changes due to scarring and slight malunion. These changes affected her emotionally.

In their submissions, Counsel have referred me to *Dass on Quantum on Damages* for comparable awards given for the type of injuries similar to the present case. Admittedly, it is always difficult to award similar amount because no two cases area like. However, doing the best I can in this case, I think the appropriate award for 1 centimeter shortening of the right leg would be RM12,000; for callus formation and depression of the scars including some 17 centimeters in length over the tibia and generally loss of amenities of life a sum of RM15,000 would be fair and reasonable. Interest on RM27,000 shall be at 8% per annum from date of service of the writ to date of judgment. As parties have agreed on special damages at RM800, interest at 4% per annum shall run from the date of accident to date of judgment. The plaintiffs are also entitled to costs.

Also found at [1986] 2 CLJ 222